

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARY C.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C24-5070-SKV

ORDER REVERSING THE  
COMMISSIONER'S DECISION

Plaintiff seeks review of the denial of her application for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for an award of benefits under sentence four of 42 U.S.C. § 405(g).

**BACKGROUND**

Plaintiff was born in 1964, has a limited education, and has worked as a cashier checker and caregiver. AR 3779-80. Plaintiff was last gainfully employed before July 2012. AR 3763.

1 In October 2013, Plaintiff applied for benefits, alleging disability as of October 2010.<sup>1</sup>  
2 AR 179-88. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff  
3 requested a hearing. AR 113-14. After conducting a hearing in January 2015, the ALJ issued a  
4 decision finding Plaintiff not disabled. AR 18-37. The Appeals Council denied Plaintiff's  
5 request for review, making the ALJ's decision the Commissioner's final decision. AR 1-6.

6 In July 2017, Plaintiff appealed the final decision of the Commissioner to this Court,  
7 which remanded the claims for further proceedings, instructing the ALJ to reevaluate the medical  
8 evidence, further develop the record, reassess Plaintiff's residual functional capacity (RFC), and  
9 proceed to step five as appropriate. AR 792-802. In July 2018, after a new hearing, the ALJ  
10 again found Plaintiff not disabled. AR 704-30. Plaintiff appealed the Commissioner's final  
11 decision and, while her appeal was pending, reapplied and was found disabled since April 2019.  
12 AR 2871.

13 In January 2020, this Court again remanded Plaintiff's claims with instructions for the  
14 ALJ to reevaluate the overall record. AR 2993-3002. On remand, after a new hearing in  
15 December 2020, where Plaintiff amended her onset date to July 2012, the ALJ reopened  
16 Plaintiff's favorable decision and concluded that Plaintiff had only been disabled since July  
17 2019. AR 2868-901.

18 In March 2022, based on the parties' stipulation, this Court remanded Plaintiff's claims  
19 again, directing the ALJ to conduct a new hearing, further develop the record, reevaluate the  
20 medical source statements, lay witness evidence, and Plaintiff's testimony, and proceed with the  
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23 <sup>1</sup> The parties erroneously reference Plaintiff's initial application date as June 2013, likely due to a  
scrivener's error by the ALJ in the June 2015 nondisability determination. AR 21, 3760; *see also* Dkt. 13  
at 2. However, the record shows that Plaintiff filed her initial applications in October 2013. AR 179-88.

sequential evaluation as necessary. AR 3852-54. After a new hearing in August 2023, the ALJ affirmed that Plaintiff was not disabled prior to July 2019. AR 3757-93.

### THE ALJ'S DECISION

Utilizing the five-step disability evaluation process,<sup>2</sup> the ALJ found:

**Step one:** Plaintiff has not engaged in substantial gainful activity since July 2012.

**Step two:** Plaintiff has the following severe impairments: COPD, obesity, status-post colon resection for diverticulitis, degenerative disc disease, degenerative joint disease, plantar fasciitis, calcaneal spurs, mood disorder, anxiety disorder.

**Step three:** These impairments do not meet or equal the requirements of a listed impairment.<sup>3</sup>

**Residual Functional Capacity:** Plaintiff can perform light work that does not require standing or walking for more than 4 hours total in a workday; that does not require climbing of ladders, ropes, or scaffolds; that does not require more than occasional balancing, stooping, kneeling, crouching, crawling, or climbing of ramps or stairs; that does not require concentrated exposure to vibration, pulmonary irritants, or extreme cold; that does not require exposure to hazards; that consists of simple instructions; and that does not require more than superficial interaction (such as “good morning” or “here is the item”).

**Step four:** Plaintiff cannot perform past relevant work.

**Step five:** As there are jobs that exist in significant numbers in the national economy that Plaintiff can perform, Plaintiff is not disabled.

AR 3763, 3766, 3779.

The ALJ's decision addressed only the period from Plaintiff's amended alleged disability onset date of July 2012 to June 30, 2019, the day prior to the date Plaintiff became disabled after reaching the advanced age category. AR 3761. This appeal followed. Dkt. 5. The parties consented to proceed before the undersigned Magistrate Judge. Dkt. 3.

<sup>2</sup> 20 C.F.R. §§ 404.1520, 416.920.

<sup>3</sup> 20 C.F.R. Part 404, Subpart P., App. 1.

## LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social security benefits when the ALJ’s findings are based on harmful legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a general principle, an ALJ’s error may be deemed harmless where it is “inconsequential to the ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (cited sources omitted). The Court looks to “the record as a whole to determine whether the error alters the outcome of the case.” *Id.*

Substantial evidence is “more than a mere scintilla. It means—and means only—such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

## DISCUSSION

Plaintiff argues the ALJ erred by misevaluating the medical evidence, lay witness statements, and Plaintiff’s testimony; resulting in a flawed RFC assessment and erroneous step five determination. Plaintiff further contends that the proper remedy is to remand for an award

1 of benefits. Dkt. 13. The Commissioner argues the ALJ's decision is free of harmful legal error,  
 2 supported by substantial evidence, and should be affirmed. Dkt. 17.

3 **A. The ALJ Erred in Evaluation of the Medical Evidence**

4 Because Plaintiff applied for benefits before March 27, 2017, prior regulations apply to  
 5 the ALJ's evaluation of medical opinion evidence. Under these regulations, where not  
 6 contradicted by another doctor, a treating doctor's opinion may be rejected only for "clear and  
 7 convincing" reasons. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (cleaned up). "If a  
 8 treating or examining doctor's opinion is contradicted by another doctor's opinion, an ALJ may  
 9 only reject it by providing specific and legitimate reasons that are supported by substantial  
 10 evidence." *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008). Accordingly, an  
 11 ALJ errs when he rejects a medical opinion "while doing nothing more than ignoring it, asserting  
 12 without explanation that another medical opinion is persuasive, or criticizing it with boilerplate  
 13 language that fails to offer a substantive basis for his conclusion." *Garrison v. Colvin*, 759 F.3d  
 14 995, 1012 (9th Cir. 2014). An ALJ may reject the opinion of a non-acceptable medical source by  
 15 giving reasons germane to the opinion. *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014).

16 *I. Myrna Palasi, M.D.*

17 In May 2013, Dr. Palasi reviewed Plaintiff's medical records and concluded that Plaintiff  
 18 was capable of less than sedentary work. Specifically, she found that Plaintiff could sit for most  
 19 of the day, stand or walk for short periods, and lift no more than 10 pounds. She also noted  
 20 Plaintiff's inability to frequently lift small objects. AR 3570. The ALJ gave this opinion "very  
 21 little weight," preferring the opinions of agency consultants who reviewed more comprehensive  
 22 records and were more qualified. AR 3776.

1 The ALJ offered no substantive findings to undermine Dr. Palasi's evaluation. Simply  
2 averring that the agency consultants reviewed more records or had better qualifications, without  
3 more, does not satisfy the required standard. *See Garrison*, 759 F.3d at 1012. The ALJ thus  
4 erred in dismissing Dr. Palasi's opinion without a substantive basis.

5 2. *DPT's Wong and Bachel*

6 In February 2014, Doctor of Physical Therapy (DPT) Christopher Wong observed  
7 clinical signs of Plaintiff's head and neck pain, radiating arm pain, and weakness in neck  
8 muscles. AR 609. Subsequently, in March 2014, DPT Angela Bachel opined that Plaintiff could  
9 work at a desk for one to four hours a day, would be disrupted by symptoms every 15 minutes,  
10 and could lift 5 to 15 pounds. She also noted Plaintiff's limitations in walking fewer than 100  
11 yards and climbing fewer than 10 steps. AR 629-30. DPT Bachel further reported that Plaintiff  
12 had not progressed in most of the areas where she needed improvement, but explained that she  
13 was discharged from physical therapy due to insurance limitations. AR 631.

14 The ALJ discounted Bachel's findings, preferring the agency consultants' opinions and  
15 reasoning that DPT Bachel had not evaluated Plaintiff over a 12-month period. AR 3777.  
16 However, this reasoning fails to provide specific and legitimate grounds for rejecting DPT  
17 Bachel's opinion. The ALJ's conclusory review of DPT Bachel's assessment is particularly  
18 flawed in light of this Court's prior remand order, which explicitly directed the ALJ to reevaluate  
19 DPT Bachel's opinion. AR 3853. Consequently, substantial evidence does not support the  
20 ALJ's evaluation. *See Garrison*, 759 F.3d at 1012; *Beneke v. Barnhart*, 379 F.3d 587, 594 (9th  
21 Cir. 2004) ("Sheer disbelief is no substitute for substantial evidence."); *Levin v. Schweiker*, 654  
22 F.2d 631, 634-35, esp. 634 n. 7 (9th Cir. 1981) (ALJ must make "full and detailed findings of  
23 fact" supporting ultimate determination of disability).

1                   3.       *Renato Fajardo, M.D.*

2           In April 2015, Dr. Fajardo observed objective evidence of pain and tenderness and  
3   opined that Plaintiff was limited to sedentary work. AR 1257-64. The ALJ found this opinion  
4   unpersuasive, citing Plaintiff's normal strength and gait findings. AR 3775-76.

5           The ALJ's decision is unsupported by substantial evidence. Normal gait findings do not  
6   necessarily contradict sedentary limitations or Plaintiff's ability to walk. *See Sofia D. v. Saul*,  
7   2021 WL 5020448, at \*5 (C.D. Cal. Jan. 28, 2021) (rejecting conclusion that normal gait was  
8   inconsistent with testimony that claimant can only walk five to ten minutes). Moreover, the  
9   ALJ's conclusion that Dr. Fajardo's opinion relied excessively on Plaintiff's subjective  
10   complaints is inconsistent with the record. To the contrary, Dr. Fajardo's opinion was based on  
11   clinical signs of pain and tenderness, AR 1257-64, and the ALJ's rejection of this evidence was  
12   improper. *See Reddick v. Chater*, 157 F.3d 715, 722-23 (9th Cir. 1998) (ALJ's decision  
13   unsupported by substantial evidence where "paraphrasing of record material is not entirely  
14   accurate regarding the content or tone of the record.").

15                   4.       *James Parker, M.D.*

16           In June 2017, Dr. Parker noted Plaintiff's abnormal mental health findings, including  
17   severe insomnia, anxiety, and difficulty with concentration, and indicated that Plaintiff's ability  
18   to perform tasks and interact with others was significantly limited. AR 1403-06. The ALJ gave  
19   partial weight to this opinion but rejected his assessment of Plaintiff's social and attendance  
20   limitations, citing Plaintiff's generally cooperative behavior during examinations. AR 3778-79.

21           The ALJ erred by dismissing Dr. Parker's opinion on these grounds. Isolated instances of  
22   cooperative behavior in clinical settings do not necessarily negate findings of significant  
23   limitations in work or social environments. *See Ghanim*, 763 F.3d at 1162. Dr. Parker's

1 observations of Plaintiff's emotional instability and distractibility were consistent with Plaintiff's  
2 documented symptoms and should not have been rejected without further explanation. AR  
3 1405-06 (noting Plaintiff spoke quickly, used a lot of non-verbal gesturing, exhibited rapid  
4 emotional swings, required frequent redirection, and was easily distractible and tangential); *see*  
5 *also Reddick*, 157 F.3d at 725 ("The ALJ must do more than offer his conclusions. He must set  
6 forth his own interpretations and explain why they, rather than the doctors', are correct.").

7                   5.       *Gary Gaffield, D.O., and Shirley Deem, M.D.*

8           In January 2017, Dr. Gaffield observed several physical limitations in Plaintiff, including  
9 weakness in her left knee and tenderness in her feet. Despite these findings, Dr. Gaffield opined  
10 that Plaintiff could stand or walk for six hours in an eight-hour workday. AR 1389. The ALJ  
11 gave this opinion significant weight but found it failed to fully account for Plaintiff's standing  
12 and walking limitations. AR 3777. Subsequently, in June 2017, Dr. Deem observed Plaintiff  
13 limping and crying during her examination and opined that Plaintiff could only stand or walk for  
14 two hours per day. AR 1396-1401. The ALJ rejected this opinion, finding it inconsistent with  
15 medical records showing a normal gait. AR 3778.

16           The ALJ's reliance on normal gait findings is insufficient to discount the limitations  
17 documented by Dr. Deem, as previously discussed. Moreover, each of the records the ALJ relied  
18 on reflect ongoing complaints about persistent pain in Plaintiff's knees, which is consistent with  
19 Dr. Deem's assessment. AR 3778 (citing AR 1471, 1477, 3182). As such, the ALJ erred by  
20 rejecting Dr. Deem's opinion. *See Reddick*, 157 F.3d at 725.

21                   6.       *Drs. Rubio, Platter, Irwin, Fitterer, Hacker*

22           The ALJ gave substantial weight to the state agency consultants opinions. The ALJ  
23 found these opinions consistent with the overall record and stated that any deviations from these



1 opinions was based on evidence received at the hearing levels. AR 3775. “Although the ALJ’s  
2 analysis need not be extensive, the ALJ must provide some reasoning in order for us to  
3 meaningfully determine whether the ALJ’s conclusions were supported by substantial evidence.”  
4 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014); *see also*  
5 *Garrison*, 759 F.3d at 1012 (ALJ errs by asserting without explanation that a medical opinion is  
6 more persuasive or failing to offer a substantive basis for his conclusions). The ALJ’s vague  
7 reference to “subsequently admitted evidence” falls short of this standard.

8 **B. The ALJ Erred in Evaluation of Plaintiff’s Testimony**

9 The ALJ found Plaintiff’s testimony unpersuasive, citing inconsistencies with the record.  
10 AR 3772-75. Absent evidence of malingering, an ALJ is required to provide “clear and  
11 convincing” reasons for discounting a claimant’s testimony. *Burrell v. Colvin*, 775 F.3d 1133,  
12 1136-37 (9th Cir. 2014). This requires the ALJ to specify which parts of the testimony are not  
13 credible and what evidence contradicts them. *Laborin v. Berryhill*, 867 F.3d 1151, 1155 (9th  
14 Cir. 2017). Although the ALJ is not obligated to accept every claim or analyze testimony line by  
15 line, the ALJ’s rationale must be clear enough “that it has the power to convince.” *Smartt v.*  
16 *Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022); *see also Ahearn v. Saul*, 988 F.3d 1111, 1116 (9th  
17 Cir. 2021); *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020).

18 In this case, the ALJ erred in rejecting Plaintiff’s testimony regarding persistent nausea  
19 and vomiting. While the ALJ acknowledged Plaintiff’s medical records showing intractable  
20 nausea and vomiting prior to and shortly after her colon surgery in August 2013, the ALJ  
21 improperly concluded that these symptoms were inconsistent with her later claims. AR 3772.  
22 But Plaintiff did not allege daily vomiting; instead, she described anxiety-induced nausea,  
23 occasional vomiting, headaches, and difficulty keeping food down during flare-ups. AR 3803.

1 The ALJ's reliance on sporadic records of nausea does not contradict Plaintiff's testimony, as  
2 those records align with her reports of anxiety-related symptoms and occasional nausea. AR  
3 3772 (Citing AR 662, 675, 678, 682, 689, 1159, 1162, 1169, 1188, 1243, 1247 (occasional  
4 nausea); 1291 (vomited after receiving contrast); 1321, 1341, 1364, 1444, 1493-94 (mild nausea,  
5 no vomiting); 1499 (occasional nausea, refill of nausea medication); 1508, 1548, 1552, 1555,  
6 1563, 1825, 2088, 2207, 2479, 3278 (nausea with cough and sinus pressure).

7 Regarding Plaintiff's complaints of severe musculoskeletal pain, the ALJ erred by  
8 dismissing her testimony based on intermittent evidence of symptom improvement following  
9 physical therapy. Although Plaintiff reported relief from physical therapy in 2014, she was  
10 unable to continue due to insurance limitations, not because her symptoms significantly  
11 improved. AR 3772-73 (citing AR 631). The ALJ also cited gaps in Plaintiff's reports of  
12 musculoskeletal pain to her providers during 2014 as evidence against her claims. However,  
13 occasional improvements in treatment do not reflect a claimant's ability to work, nor do they  
14 negate the severity of any underlying symptoms. *See Garrison*, 759 F.3d at 1017.

15 The ALJ also discounted Plaintiff's claims regarding her inability to stand or walk for  
16 prolonged periods due to calcaneal spurs, plantar fasciitis, and knee degeneration, noting that her  
17 gait and strength were normal at most visits. AR 3773 (citing AR 289, 636, 640, 660, 1079,  
18 1081, 1161, 1164, 1168). However, the ALJ's reliance on normal gait observations fails to  
19 consider that such evidence does not necessarily reflect the ability to sustain work-related  
20 activities. Moreover, the ALJ's dismissal of Plaintiff's need to elevate her legs was improper.  
21 The ALJ noted that Plaintiff was only instructed to elevate her legs during acute flare-ups, but  
22 Plaintiff testified that she needed to take breaks and sit when her ankles and knees hurt, not that  
23 she required constant elevation. AR 3807.

1 Finally, the ALJ improperly rejected Plaintiff's testimony concerning her mental health  
2 symptoms, specifically her depression and anxiety. Although Plaintiff received treatment for  
3 these conditions during brief hospitalizations in 2013 and was advised to seek counseling in  
4 2016, the ALJ noted the lack of follow-up treatment as evidence undermining her testimony. AR  
5 3773-74. While it is true that "[e]vidence of medical treatment successfully relieving symptoms  
6 can undermine a claim of disability," *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017),  
7 this does not negate Plaintiff's ongoing impairments. *See Holohan v. Massanari*, 246 F.3d 1195,  
8 1205 (9th Cir. 2001) ("some improvement does not mean the person's impairments no longer  
9 seriously affect their ability to function.").

10 The ALJ also discounted Plaintiff's mental health symptoms based on a psychiatric  
11 evaluation in June 2016, which found largely normal memory and concentration in clinical  
12 settings. AR 3773-74. However, individuals with mental health issues often experience "cycles  
13 of improvement and debilitating symptoms," and isolated improvements do not disprove  
14 disability. *Garrison*, 759 F.3d at 1017. As previously discussed, the ALJ's conclusion that  
15 Plaintiff's claims of social isolation and frequent crying were inconsistent with her clinical  
16 presentation is similarly unsupported. Given these issues, the Court finds the ALJ failed to  
17 provide the requisite "clear and convincing" reasons for rejecting Plaintiff's testimony.

### 18 C. Scope of Remand

19 Remand for an award of benefits "is a rare and prophylactic exception to the well-  
20 established ordinary remand rule." *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017). The  
21 Ninth Circuit has established a three-step framework for deciding whether a case may be  
22 remanded for an award of benefits. *Id.* at 1045. First, the Court must determine whether the ALJ  
23 failed to provide legally sufficient reasons for rejecting evidence. *Id.* (citing *Garrison*, 759 F.3d

1 at 1020). Second, the Court must consider “whether the record has been fully developed,  
2 whether there are outstanding issues that must be resolved before a determination of disability  
3 can be made, and whether further administrative proceedings would be useful.” *Treichler*, 775  
4 F.3d at 1101. Third, if the first two steps are satisfied, the Court must determine whether, “if the  
5 improperly discredited evidence were credited as true, the ALJ would be required to find the  
6 claimant disabled on remand.” *Garrison*, 759 F.3d at 1020. Even when all three steps are met, if  
7 “an evaluation of the record as a whole creates serious doubt that a plaintiff is, in fact, disabled,”  
8 the Court has discretion to remand for further proceedings. *Id.*

9 Here, Plaintiff satisfies all three conditions of the credit-as-true rule, making remand for  
10 benefits the appropriate course. First, as discussed throughout this order, the ALJ failed to  
11 provide legally sufficient reasons for rejecting Plaintiff’s medical source statements and  
12 testimony. The Court need not repeat that analysis here.

13 Second, there is no need to further develop the record or hold additional administrative  
14 proceedings. The ALJ failed to follow the proper methodology for evaluating the medical source  
15 statements and did not comply with this Court’s previous remand instructions. Additionally, the  
16 ALJ mischaracterized Plaintiff’s testimony and improperly rejected her complaints without  
17 offering clear and convincing reasons for doing so. The Vocational Expert (VE) testified that,  
18 based on the ALJ’s RFC assessment, a person with Plaintiff’s limitations would be unable to  
19 sustain competitive employment if they needed to sit throughout the day, miss more than one day  
20 of work per month, take extra breaks, or be off-task more than 10% of the time. AR 3808-12.  
21 Because the improperly discredited medical opinions outlined limitations incompatible with full-  
22 time work, Plaintiff is entitled to benefits. *Trevizo v. Berryhill*, 871 F.3d 664, 677 (9th Cir.  
23 2017).

1 Although the Commissioner argues that further proceedings are necessary to allow the  
2 ALJ to revisit the improperly rejected medical opinions and testimony, Ninth Circuit precedent  
3 and the credit-as-true rule preclude such an argument. The Court has recognized that a remand  
4 for the ALJ to have a second—or in this case, a fifth—chance to review improperly rejected  
5 evidence does not qualify as a remand for a “useful purpose.” *See Benecke*, 379 F.3d at 595  
6 (“Allowing the Commissioner to decide the issue again would create an unfair ‘heads we win;  
7 tails, let’s play again’ system of disability benefits adjudication.”); *Moisa v. Barnhart*, 367 F.3d  
8 882, 887 (9th Cir. 2004) (“The Commissioner, having lost this appeal, should not have another  
9 opportunity to show [Plaintiff] is not credible...”).

10 Third, if the improperly discredited evidence were credited as true, the ALJ would be  
11 required to find Plaintiff disabled on remand. The Court’s conclusion follows directly from the  
12 analysis of the ALJ’s errors and the strength of the improperly discredited evidence, seven  
13 medical providers consistently concluded that Plaintiff was disabled due to severe physical and  
14 mental impairments. Moreover, the VE testified that a person with the limitations described by  
15 Plaintiff’s medical providers would be unable to work. Consequently, Plaintiff meets the credit-  
16 as-true standard.

17 Turning to whether the Court should exercise its discretion to remand for further  
18 proceedings, the answer is clearly no. The Commissioner merely reasserts the same arguments  
19 already rejected by this Court—namely, that the opinions of Plaintiff’s medical providers should  
20 not be given significant weight, and that Plaintiff’s testimony should be discounted. The  
21 Commissioner’s reliance on a few instances of slight improvement in Plaintiff’s condition fails  
22 to undercut Plaintiff’s overall claim of disability. The Commissioner does not point to any  
23 overlooked evidence that would cast doubt on Plaintiff’s disability status. As the record

1 demonstrates, since her alleged onset date, Plaintiff has consistently suffered from severe  
2 impairments, including pain, sleep issues, and anxiety. Even though these symptoms may have  
3 temporarily improved at times, the evidence—corroborated by Plaintiff’s medical providers—  
4 leaves no room to doubt that she has been unable to work since July 2012.

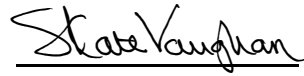
5 In addition, the “exceptional facts” of this case, *Terry v. Sullivan*, 903 F.2d 1273, 1280  
6 (9th Cir. 1990), strongly favor remand for immediate payment of benefits. Plaintiff is 60 years  
7 old and first sought benefits more than a decade ago; and the Commissioner has repeatedly failed  
8 to properly evaluate her application or follow this Court’s instructions for remand. “[F]urther  
9 delays at this point would be unduly burdensome.” *Terry*, 903 F.2d at 1280 (exercising  
10 discretion to order payment of benefits where plaintiff was 64 years old and applied for benefits  
11 four years earlier, despite lack of development in the record about a job plaintiff was allegedly  
12 qualified for); *see also Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996); (remanding for  
13 benefits where plaintiff “already waited over seven years for her disability determination”); *see*  
14 *also Trevizo*, 871 F.3d at 682-83 (remanding for benefits where plaintiff was 65, sought benefits  
15 seven years prior, and claimed disability ten years prior, despite some unexplained non-  
16 compliance with medication).

17 Because the medical opinion evidence and Plaintiff’s testimony establish her disability,  
18 the Court need not address whether the ALJ erred in evaluating lay witness statements or  
19 Plaintiff’s RFC. Taking everything into account, Plaintiff meets all three prongs of the credit-as-  
20 true rule, and a thorough review of the record does not raise any serious doubts as to her  
21 disability. Therefore, remand for a calculation and award of benefits is warranted under the  
22 Ninth Circuit’s credit-as-true precedent.  
23

**CONCLUSION**

For the reasons set forth above, the Commissioner's final decision is **REVERSED** and this case is **REMANDED** for an award of benefits under sentence four of 42 U.S.C. § 405(g).

Dated this 4th day of October, 2024.



S. KATE VAUGHAN  
United States Magistrate Judge